

Sales Tax



**Regional
Transportation
Authority**

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To: Illinois Department of Revenue

From: Jordan Matyas, Chief of Staff to the RTA

Date: December 12, 2013

Re: **The Regional Transportation Authority's Comments on Sales Tax Regulations
Following the *Hartney* Opinion**

- **The Impact of the Hartney Opinion:** As the Illinois Supreme Court stated in *Hartney Fuel Oil Co. v. Hamer*, local retailers' occupation taxes are assessed upon the "business of selling" and require the consideration of a composite of many activities. Determining where a retailer is engaged in the business of selling will not be difficult for the vast majority of retailers. For most retailers, there will be only one location where all or most of its selling activities occur, and the issue will be moot. When a retailer's selling activities take place in multiple jurisdictions, however, *Hartney* held that determining whether enough of the business of selling is taking place in a given jurisdiction to assess tax there requires a "fact-intensive inquiry," and it is by nature a fact-specific question that must be answered on a case-by-case basis. Although not difficult in most circumstances, this inquiry cannot be reduced to an overly-simplistic "bright-line rule."
- **Applicability of the Hartney Opinion to Existing Tax Practices:** In *Hartney*, the Court did not announce a new test or a change to Illinois law. Thus, the holdings in *Hartney* continue to apply to Illinois taxpayers now, and the Department of Revenue is obligated to enforce them now. Any "grace period" would violate the Department of Revenue's duty to collect the local retailers' occupation taxes, and it would further prejudice the local governments that are funded by the taxes. Local governments already have lost millions in tax revenues due to taxpayers who have not complied with the law.
- **Purpose of the Tax:** The purpose of any retailers' occupation tax is to raise revenues from retailers who benefit from the services that a unit of local government provides, including essential services such as transit and fire and police protection. A retailer who chooses to locate its selling activities in a particular jurisdiction must contribute to paying for the services that it consumes. Where a retailer claims that selling activity occurs in multiple

locations, the relevant inquiry is how much activity occurs in each location as measured by various metrics relating to the impact on public services, such as the number of employees involved, the time spent by the employees on activities relating to the sales, and the amount of property required for the selling activities.

- **Factors to Consider:** If the Department of Revenue seeks to provide a list of factors for retailers to consider, it must be an open-ended, non-exclusive list, and the Department should emphasize that no single factor is controlling. At least the following factors should be considered by retailers and the Department:
 - The location where a retailer maintains its inventory.
 - The location where a retailer sets prices.
 - The location where a retailer carries out its marketing efforts.
 - The location where a retailer processes purchase orders.
 - The location from which purchased items are shipped.
 - The location where solicitation of sales takes place, such as where a retail showroom is located.
 - The location where the retailer verifies the existence of inventory for a buyer.
 - The location where negotiations of terms of sale take place.
 - The location where passing of title from the seller to the buyer takes place.
 - The location where the retailer receives payments of the purchase price.